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10/009,355	04/04/2002	Antti Toskala	915.399	2321

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EXAMINER

CUMMING, WILLIAM D

ART UNIT PAPER NUMBER

2683

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/009,355

Applicant(s)

ANTTI TOSKALA

Examiner

WILLIAM D CUMMING

Art Unit

2683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/25/05</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2005 has been entered.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "*the list may not be incorporated into the specification but must be submitted in a separate paper.*" Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **3. Waiver of the Copy Requirement in 37 CFR 1.98 for Cited Pending U.S.**

#### **Patent Applications**

37 CFR 1.98 requires that for each cited pending U.S. patent application, an information disclosure statement (IDS) include a legible copy of the application specification, including the claims, and any drawing of the application, or that portion of the application which caused it to be listed, including any claims, directed to that portion. See 37 CFR 1.98(a)(2)(iii).

The United States Patent and Trademark Office (USPTO) has been scanning newly filed patent applications and the existing inventory of patent applications into USPTO's Image File Wrapper (IFW) system since June of 2003. See Notification of United States Patent and Trademark Office Patent Application Records being Stored and Processed in Electronic Form, 1271 Off. Gaz. Pat. Office 100 (June 17, 2003). Applications stored in the IFW system may be viewed by examiners on their desktop computers. Consequently, there is no longer a need to require a copy of the specification, including claims, and drawings of a U.S. patent application (or portion of the application) listed on an IDS when the cited application is stored in the USPTO's IFW system, and can be readily viewed by examiners, applicants and members of the public.

Therefore, the requirement in 37 CFR 1.98(a)(2)(iii) for a legible copy of the specification, including the claims, and drawings of each cited pending U.S. patent application (or portion of the application which caused it to be listed) is *sua sponte* waived where the cited pending application is stored in the USPTO's IFW system. See 37 CFR 1.183. This waiver is effective immediately.

Applications filed under 35 U.S.C. § 111 on or after June 30, 2003, and international applications that have entered the national stage on or after June 30, 2003, have been or are being scanned into the USPTO's IFW system. When citing to a pending application filed under 35 U.S.C. § 111 before June 30, 2003, or that entered the national stage before June 30, 2003, the applicant may check the private Patent Application Information Retrieval (PAIR) System to see whether the application is stored in the USPTO's IFW system in order to determine if a copy of the application (or portion of the application) is required to be provided with an IDS. The private PAIR System can be accessed over the Office's Internet Web site ([www.uspto.gov](http://www.uspto.gov)).

When citing to a pending U.S. patent application that has been published under 35 U.S.C. § 122(b) (eighteen-month publication), the USPTO prefers that the citation be to the patent application publication (by publication number) rather than to the application itself (by application number).

This waiver is limited to the specification, including the claims, and drawings in the U.S. application (or portion of the application). If material other than the specification, including the claims, and drawings in the file of a U.S. patent application is being cited in an IDS, the IDS must contain a legible copy of such material. See 37 CFR 1.98(a)(1)(iv).

Inquiries concerning this notice may be directed to Jeanne M. Clark, Senior Legal Advisor, Office of Patent Legal Administration, at (703) 306-5603.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 17-23 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the control information transmitted by the first stations to the second station is different CDMA spreading codes, does not reasonably provide enablement for the control information transmitted by the first stations to the second station is differently coded. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to know that differently coded means different CDMA spreading codes the invention commensurate in scope with these claims. One skilled in the art would believe that differently coding would mean CDMA is different coding than TDMA or TDD or the thousand of types encryption codes or even the binary bits in a word different hence, are coded differently, and the specification does not provide an enabling disclosure for this. The same reasoning is for the second signals at least partially differing from the first signals by the coding thereof.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 7, 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, "...*the rate*..." lacks antecedent basis. The rate of what? The rate of propagation? The rate of digital data? The rate of frequency changes?

In claim 10, the term "...*in respect*..." is indefinite. Is it the same or different?

In claims 11, 12, and 15 the term "...*said first and second stations*..." lack antecedent basis.

In claim 13, "*the code division multiple access technique*" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 17, 18, 19, rejected under 35 U.S.C. 102(e) as being anticipated by **D'Amico**.

**D'Amico** discloses a method of transmitting signals from a plurality of base stations (figure 1, #102, 124, 130) to the same mobile station (#120) in handoff (*"While still referring to FIG. 1, another embodiment of the invention can be described where the handset 120 has already established a communication link with base station 102. The handset monitors the surrounding base stations within the coverage areas 108 and 110 as previously described, and if the ARSS for base station 124 exceeds the ARSS for base station 102, the handset 120 will perform a handoff function where the communication link is transferred to base station 124 via the radio port control unit 122. The same technique is utilized for communication link set up where a communication link is to be established by the portable. The portable monitors the surrounding base stations and calculates an ARSS for each channel transmission having a code word. The portable then selects the base station with the highest associated ARSS. When a*

*communication link is established, this invention provides handover, and when a handset is in idle or scan mode, this invention will provide registration. The method for optimum base selection as described by the invention, allows a portable to make decisions about the best base with which to register, handoff, or set up a link.”). The method comprising the step of transmitting first signals comprising a first communication (figure 2, #212) and first associated information (#206) from the base station (#102) to the mobile station (#120) and transmitting second signals comprising the first communication (#212) and second associated information (“at the first and second base stations, assigning a code word to each of the first and second communication channels, the code word corresponding to a transmit power level for the first and second communication channels, respectively, the transmit power levels being selected from a plurality of power levels; transmitting first and second signals from the first and second base stations respectively, the first signal including the code word for the first communication channel and the second signal including the code word for the second communication channel;”). Receiving the mobile station (#120) the first and second signals wherein the mobile station processes the first and second signals in accordance with the first and second associated information (“at the handset, determining the transmit power level for each of the first and second base stations based on their respective code word; at the handset, adjusting said RSS for each of the first and second signals based on the transmit power level for each of the first and second base stations respectively; and at the handset,*



*selecting the optimum base station for communication with said handset based on the adjusted RSS for each of said first and second signals.”)*

Regarding claims 17 and 23, since “assigning a code word to each of the first and second communication channels, the code word corresponding to a transmit power level for the first and second communication channels” they corresponding to different power levels, hence the words are different, the bits of information must be different, hence, differently coded.

Regarding claims 18 and 19, “While still referring to FIG. 1, another embodiment of the invention can be described where the handset 120 has already established a communication link with base station 102. The handset monitors the surrounding base stations within the coverage areas 108 and 110 as previously described, and if the ARSS for base station 124 exceeds the ARSS for base station 102, the handset 120 will perform a handoff function where the communication link is transferred to base station 124 via the radio port control unit 122. The same technique is utilized for communication link set up where a communication link is to be established by the portable. The portable monitors the surrounding base stations and calculates an ARSS for each channel transmission having a code word. The portable then selects the base station with the highest associated ARSS. When a communication link is established, this invention provides handover, and when a handset is in idle or scan mode, this invention will provide registration. The method for optimum base selection as

*described by the invention, allows a portable to make decisions about the best base with which to register, handoff, or set up a link."*

11. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Malkamaki, et al** as stated by European Search Report of September 22, 2004.

***Claim Rejections - 35 USC § 103***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 2, 4, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **D'Amico** in view of applicant's admission of the prior art.

Applicant admits that code division multiple access technique and it's properties (i.e. comprises speech, the rate of digital data, etc.) are prior art and well known in the art and not invented by him. It would have been obvious to incorporate the use of the admitted and well known use of CDMA technique and it's properties in the method of transmitting signals from a plurality of base stations of **D'Amico** in order to perform a soft handoff.

15. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **D'Amico** in view of **Widegren, et al.**

**Widegren, et al** teaches the base stations are connected to different control elements (figure 1, #24) and it would have been obvious to modify **D'Amico** with the teaching of **Widegren, et al** of different control elements, the RNC, in order to more effectively control the handoff communications.

16. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **D'Amico** in view of **Nakagaki**.

**Nakagaki** teaches the first coding has a first number of symbols available using a first number and the second coding has a second number of symbols available using a second number of bits, wherein the first number of symbols is greater than the second number of symbols (figure 6-10, column 2, line 37 to column 4, line 37). It would have been obvious to modify **D'Amico** with the teaching of **Nakagaki** of number symbols and bits in order to process load distribution of the control information during handoff.

### ***Response to Amendment***

#### **17. Updated Notice of Centralized Delivery and Facsimile Transmission Policy for Patent Related Correspondence, and Exceptions Thereto**

On December 1, 2003, the United States Patent and Trademark Office (Office) established a "*centralized delivery*" policy for patent related correspondence to enable the Office to promptly scan the correspondence into the Office's image file wrapper (IFW) system. The "*centralized delivery*" policy requires most patent related correspondence to be: a) faxed to the central facsimile number ((703) 872-9306), b) hand carried or delivered to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), or c) mailed to the mailing address set forth in 37 CFR 1.1 (e.g., P.O. Box 1450, Alexandria, VA 22313-1450).i The "*centralized delivery*" policy was revised in three follow-up notices. In order

to provide further updated information, and to provide a single comprehensive statement of the Office's current "*centralized delivery*" policy, this notice is issued. This notice replaces all prior Office notices specifying a specific fax number or hand carry address for certain patent related correspondence.

General "*Centralized Delivery*" Policy:

For patent related correspondence, hand carry deliveries must be made to the Customer Service Window, and facsimile transmissions must be sent to the central facsimile number ((703) 872-9306), unless an exception, as noted below, applies. Exceptions to the general policy of "*centralized delivery*" generally involve situations where special handling of the patent related correspondence is available. All the current exceptions are listed in this notice. Correspondence which is not related to a specific patent or patent application, such as a question on policy, on employment, or other general inquiry, is not covered by this notice. Below are two lists which set forth all the current exceptions to the "*centralized delivery*" policy. The first list covers the exceptions for certain hand carried items, and the second list covers the exceptions for certain facsimile transmitted items. Both lists reflect the relocation of most USPTO operations to the Alexandria, Virginia campus.

List I – Exceptions for Certain Hand Carried Correspondence Current exceptions:

Only the following types of correspondence may be delivered (hand-carried) to the specific location provided below instead of the Customer Service Window. If correspondence listed below is carried to the Customer Service

Window, the correspondence will be accepted and routed to the appropriate office.

1. Access Requests:

Requests for access to patent application files may continue to be hand carried to the File Information Unit (FIU) in Room 2E04, 2900 Crystal Drive (South Tower), Arlington VA 22202. Requests for access to patent application files that are maintained in the Image File Wrapper system and that have not yet been published may also be hand carried to the Public Search Facility on the 1st floor of the Madison East building, 600 Dulany Street, Alexandria VA 22314.

2. Patent Term Extensions under 35 U.S.C. § 156:

Patent term extension applications under 35 U.S.C. 156 (Hatch/Waxman) may be hand-carried to the Office of Patent Legal Administration (OPLA) in Room 07D85, 600 Dulany Street (Madison West building), Alexandria VA 22314. At the guard station in Madison West (near the elevators), the security guard should call the OPLA at either (571) 272-7744 or (571) 272-7746 for delivery assistance.

3. Assignments to be Recorded:

Assignments may be hand-carried to the Office of Public Records Customer Service Window on the 2nd floor of the South Tower building, 2900 Crystal Drive, Arlington VA 22202.

4. Office of General Counsel:

Correspondence for the Office of General Counsel may be hand-carried to the Office of General Counsel in Room 10C20, 600 Dulany Street (Madison East building), Alexandria VA 22314. At the guard station in Madison East (near the elevators), the security guard should call the Office of General Counsel at 571-272-7000 for delivery assistance.

5. Solicitor's Office:

Correspondence for the Solicitor's Office may be hand-carried to the Solicitor's Office in Room 8C43, 600 Dulany Street (Madison West building), Alexandria VA 22314. At the guard station in Madison West (near the elevators), the security guard should call the Solicitor's Office at 571-272-9035 for delivery assistance.

6. Interference related correspondence:

Correspondence relating to interferences may be hand-carried to the 1st floor lobby of Madison East building, 600 Dulany Street, Alexandria VA 22314, where a drop-off box for hand-carried documents to be filed with the Board of Patent Appeals and Interferences is located. Customers need to pass through the magnetometer and have the materials passed through the x-ray sensors before placing them in the drop-off box. The drop-off box is for Interference related correspondence **ONLY**. Boxes are not

permitted in the drop-off box. Boxed materials should be hand-carried to Madison East, Room 9B55-A using the following procedures. At either guard station (concourse level or 1st floor) in Madison East (near the elevators), the security guard should call the Board of Patent Appeals and Interferences at 571-272-9797 to obtain authorization to allow entry into the building for delivery to Room 9B55-A. Access to Room 9B55-A is available from 8:30 AM to 4:45 PM only. Documents/boxes hand-carried to the drop-off box or to Room 9B55-A after 4:45 PM (EST) will receive the next day's filing date. Customers desiring a stamped return receipt for their filing need to personally bring their filing and postcard to Room 9B55-A during the hours stated above, or leave the postcard with the filing (postcard must include correct postage mail stamp and the address where the postcard is to be mailed). The Board will stamp the filing date and mail the postcard to the customer.

#### 7. Secrecy Order:

Applications subject to a secrecy order pursuant to 35 U.S.C. 181, or are national security classified, and correspondence related thereto, may be hand-carried to the Licensing and Review location. See 37 CFR Secs. 5.1(c) and 5.2(c). Licensing and review is expected to relocate to the Alexandria campus on April 1, 2005. Effective April 1, 2005, the Licensing and Review location is:



Technology Center 3600, Room 4B31, 501 Dulany  
Street (Knox building), Alexandria VA 22314.

At the guard station in Knox (near the elevators), the security  
guard should call Licensing and Review at (571) 272-8203 for  
delivery assistance. Prior to April 1, 2005, the Licensing and  
Review location is:

Technology Center 3600, Office of the Director, 2451  
Crystal Drive (Crystal Park 5 building), Room 3D07  
Arlington, VA 22202.

8. Explicit Foreign Filing License Petitions:

Effective April 1, 2005, petitions for foreign filing license  
pursuant to 37 CFR 5.12(b) for which expedited handling is  
requested and petitions for retroactive license under 37 CFR 5.25,  
may be hand-carried to Licensing and Review in Room 4B41, 501  
Dulany Street (Knox building), Alexandria VA 22314. At the guard  
station in Knox (near the elevators), the security guard should call  
Licensing and Review at (571) 272-8187 for delivery assistance.

9. Petitions to Withdraw from Issue:

Petitions to Withdraw from Issue may be hand carried  
to the Office of Petitions on the 7th floor of the Madison West  
building, 600 Dulany Street, Alexandria VA 22314. At the  
guard station in Madison West (near the elevators), the

security guard should call the Office of Petitions at (571) 272-3282 for delivery assistance. Hand carried papers will be accepted between the hours of 8:30 a.m. until 3:45 p.m.

10. Documents requested by the Office of Patent

Publication:

Documents requested by the Office of Patent

Publication may be hand carried to the Office of Patent

Publication in Room 8A24, 2900 Crystal Drive (South Tower building), Arlington VA 22202, during business hours.

Elimination of certain previously authorized exceptions:

Hand carry delivery to a location other than the Customer Service Window is no longer permitted for the following types of correspondence:

(1) correspondence relating to PCT

international applications prior to national stage entry (35 U.S.C. 371) [Note: as of January 14, 2005, there no longer is a separate PCT Operations Customer Window];

(2) petitions for express abandonment to avoid publication under 37 CFR 1.138(c);

(3) requests to initiate, or related to on-going, ex parte or inter partes reexamination proceedings;

(4) design patent applications with a corresponding request for expedited examination under 37 CFR 1.155; and (5) correspondence for the Office of Enrollment and Discipline (OED).

List II -Exceptions for Certain Facsimile Transmitted Correspondence For each Office location listed below, only the particular type of correspondence indicated may be transmitted to the specific facsimile number at that Office location. All other types of facsimile transmitted correspondence must be sent to the central facsimile number ((703) 872-9306).

1. Office of Initial Patent Examination (OIPE) Request for corrected Filing Receipt:

(703) 746-9195 facsimile number

Response to Notice to File Missing Parts:

(703) 746-4060 facsimile number

Note: New applications, correspondence being submitted for the purpose of obtaining an application filing date, and color drawings may NOT be transmitted by facsimile. OIPE Customer Service telephone number: (703) 308-1202

2. PCT Operations and PCT Legal Administration Correspondence subsequent to filing in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Examining Authority:

Papers in international applications:

(703) 305-3230 facsimile number

Response to Decisions on Petition:

(571) 273-0459 facsimile number

Note: An international application for patent or a copy of the international application and the basic national fee necessary to enter the national stage, as specified in 37 CFR 1.495(b), may **NOT** be submitted by facsimile. See 37 CFR 1.6(d)(3) (referencing 37 CFR 1.8(a)(2)(i)(D) and (F)). Subsequent correspondence may be transmitted by facsimile in an application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Examining Authority, but it will **NOT** receive the benefit of any certificate of transmission (or mailing). See 37 CFR 1.8(a)(2) (i)(E).

Correspondence during national stage, subsequent to entry, are handled in the same manner as a U.S. national application.

The PCT Help Desk:

(571) 273-0419 facsimile number (703) 305-3257 telephone number

3. Office of Patent Publication Payment of an issue fee and any required publication fee by authorization to charge a deposit account or credit card, and drawings:

(703) 746-4000 facsimile number

Note: Although submission of drawings by facsimile may reduce the quality of the drawings, the Office will generally print the drawings as received. Office of Patent Publication telephone numbers to check on receipt of payment: (703) 308-6789 or 1-888-786-0101

4. Office of Pre-Grant Publication Petitions for express abandonment to avoid publication under 37 CFR 1.138(c), and Requests for express abandonment under 37 CFR 1.138: (703) 305-8568 facsimile number

Pre-Grant Publication Division telephone number for questions relating to the publication of patent applications:

(703) 605-4283. Questions may also be directed by e-mail to [pgpub@uspto.gov](mailto:pgpub@uspto.gov).

5. Electronic Business Center (EBC) Requests for Customer Number Data Change (PTO/SB/124), and Requests for a Customer Number (PTO/SB/125):

(703) 308-2840 facsimile number.

Note: The EBC may also be reached by e-mail at: [ebc@uspto.gov](mailto:ebc@uspto.gov).

EBC telephone number for customer service and assistance:

(866) 217-9197

6. Assignment Branch Assignments or other documents affecting title:

(703) 306-5995 facsimile number

Note: Customers may submit documents directly into the automated Patent and Trademark Assignment System and receive the resulting recordation notice at their facsimile machine. (Assignment documents submitted through the

Electronic Patent Assignment System also permits the recordation notice to be faxed to customers.) Credit card payments to record assignment documents are now accepted, and use of the Credit Card form (PTO-2038) is required for the credit card information to be separated from the assignment records. Only documents with an identified patent application or patent number, a single cover sheet to record a single type of transaction, and the fee paid by an authorization to charge a USPTO deposit account or credit card may be submitted via facsimile. Please refer to the USPTO Web Site, at <http://www.uspto.gov/web/offices/ac/ido/opr/ptasfax.pdf> for more information regarding the submission of assignment documents via facsimile.

Assignment Branch telephone number for assistance:

(703) 308-9723 7.

Central Reexamination Unit (CRU) *Inter partes* reexamination correspondence, except for the initial request: (571) 273-0100 facsimile number

Note: All *ex parte* reexamination correspondence, except for the initial request, may be sent by facsimile transmission to the central facsimile number. Correspondence related to reexamination proceedings will be separately scanned in the CRU.

CRU telephone number for customer service and inquiries: (571) 272-7705 8.

Board of Patent Appeals and Interferences Correspondence related to pending interferences permitted to be transmitted by facsimile (only where expressly authorized, see 37 CFR 1.6(d)(9)):

(571) 273-0042 facsimile number

Note: Correspondence should not be transmitted to this number if an interference has not yet been declared.

9. Office of the General Counsel Correspondence permitted to be transmitted to the Office of General Counsel:

(571) 273-0099 facsimile number

10. Office of the Solicitor Correspondence permitted to be transmitted by facsimile to the Office of the Solicitor:

(571) 273-0373 facsimile number

11. Licensing and Review Petitions for a foreign filing license pursuant to 37 CFR 5.12(b), including a petition for a foreign filing license where there is no corresponding U.S. application (37 CFR 5.13):

(571) 273-0185 facsimile number (if the fax is transmitted on or after April 1, 2005) (703) 305-7658 facsimile number (if the fax is transmitted prior to April 1, 2005)

Note: Correspondence to be filed in a patent application subject to a secrecy order under 37 CFR Sec. 5.1 through 5.5 and directly related to the secrecy order content of the application may **NOT** be transmitted via facsimile.

See 37 CFR Sec. 1.6(d)(6).

12. Office of Petitions Petitions to Withdraw from Issue:

(571) 273-0025 facsimile number

Note: All other types of petitions must be directed to the Central Facsimile Number ((703) 872-9306). Any paper other than a Petition to Withdraw from Issue which is sent to the Office of Petitions fax number (instead of the Central Facsimile Number) will be discarded. Petitions sent to the Central Facsimile Number should be marked "Special Processing Submission".

Questions regarding this notice may be e-mailed to **PatentPractice@uspto.gov**, or directed to the Inventors' Assistance Center by telephone at (800)786-9199, or (703)308-4357. \_\_\_\_3/2/05\_\_\_\_

**18. Termination of the Waiver of Provisions of 37 CFR 1.8 and 1.10 for Correspondence Intended for the United States Patent and Trademark Office but Addressed to Washington, DC 20231**

Effective on April 4, 2005, the provisions of 37 CFR 1.8 (Certificate of Mailing) and 1.10 ("Express Mail") will no longer be waived for correspondence addressed to the United States Patent and Trademark Office (USPTO), Washington, DC 20231. On May 1, 2003, the USPTO changed its address for certain correspondence to P.O. Box 1450, Alexandria, VA 22313-1450. See 37 CFR 1.1 and *Correspondence with the United States Patent and Trademark Office*, 68 Fed. Reg. 14332 (March 25, 2003), 1269 *Off. Gaz. Pat. Office* 159 (Apr. 22, 2003). To allow applicants time to become



accustomed to the new address in Alexandria, VA, the USPTO waived the provisions of 37 CFR 1.8 and 1.10 such that correspondence addressed to Washington, DC 20231 would be treated as acceptable under 37 CFR 1.8 and 1.10 for otherwise compliant Certificates of Mailing and "*Express Mail*." The United States Postal Service (USPS) has ceased forwarding to the USPTO correspondence addressed to Washington, DC 20231. Additionally, the USPTO will no longer arrange for the delivery to Alexandria, VA of correspondence addressed to Washington, DC 20231 after April 3, 2005. Thus, after April 3, 2005, all correspondence addressed to the Washington, DC 20231 address will be returned to sender marked by the USPS as undeliverable. Such mail returned to the sender by the USPS will not be considered proof of prior filing or mailing under 37 CFR 1.8(b) or 1.10(e) since the correspondence was not mailed in accordance with 37 CFR 1.1. Pursuant to 37 CFR 1.1, correspondence intended for the USPTO must be mailed to P.O. Box 1450, Alexandria, VA 22313-1450, except as otherwise provided.

1. Correspondence intended for the USPTO, unless directed otherwise, must be addressed to: Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

2. Correspondence in patent-related matters to organizations reporting to the Commissioner for Patents must be addressed to: Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

3. Correspondence in trademark-related matters, except documents sent to the Assignment Services Division for recordation, requests for copies of trademark documents, and documents directed to the Madrid Processing Unit,

must be addressed to: Commissioner for Trademarks P.O. Box 1451 Alexandria,  
VA 22313-1451

The above addresses are the USPTO's three general mailing addresses for mail delivered by the USPS; however, the USPTO has separate mailing addresses for certain correspondence as set forth in the notice titled "*Mailing and Hand Carry Addresses for Mail to the United States Patent and Trademark Office*" (formerly, "*Special Mail Stops For Patent Mail*") that is published each week in the Official Gazette Notices and posted on the USPTO Internet web site. Questions regarding this notice may be e-mailed to PatentPractice@uspto.gov, or directed to the Inventors' Assistance Center (formerly the Patent Assistance Center (PAC)) by telephone at 800-786-9199 or 703-308-4357. Date:       3/1/05      

### ***Response to Arguments***

19. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Knutsson, et al** disclose modified downlink power control during macrodiversity.

**21. Replacement Notice: Copies of Patent Application Records will be Provided in both Electronic and Paper Form**

The Official Gazette notice, published on August 24, 2004 entitled "*All Electronic Copies of Patent Application Records Will Now Be Provided as Certified Copies in Electronic Form*" (1285 Off. Gaz. Pat. Off, August 24, 2004) is hereby rescinded. The USPTO is reinstating, until further notice, the procedures in effect prior to July 30, 2004 for providing certified copies of patent application records with paper certification statements. The USPTO will also offer electronic certified copies of patent application records at the requester's option.

**Certified Copies with Paper Certification**

Unless otherwise requested, certified copies of patent application records provided pursuant to 37 CFR 1.19 (b) will be produced with a paper certification statement, continuing the practice in effect prior to July 30, 2004. The certification statement will include an embossed seal and original signature.

**Certified Copies with Electronic Certification**

Customers ordering certified copies of patent applications as filed or patent-related file wrapper and contents of published applications from the USPTO website will have the option to choose electronic copies with electronic certification. These files include an imaged certification statement as part of a PDF file containing the document TIFF images. These electronic files are digitally signed by the USPTO for authenticity and integrity, and cannot be undetectably modified. Customers may choose to download these electronic files from the USPTO website or receive them on compact disc.

**Paris Convention for the Protection of Industrial Property and Priority**

Irrespective of whether the USPTO provides a paper certified copy or an electronic certified copy, Article 4(d)(3) of the Paris Convention prohibits any country that is a member of the convention from requiring further authentication of the certified copy for purposes of claiming priority under the Paris Convention. (The text of the Paris Convention and a list of its members are available at [www.wipo.int/treaties/en/ip/paris/index.html](http://www.wipo.int/treaties/en/ip/paris/index.html).)

The USPTO is working with other intellectual property offices to encourage the acceptance of priority documents in electronic form with electronic certification. A list of offices and international intellectual property organizations that have agreed to accept electronic certified copies will be posted on the USPTO website soon, and updated regularly.

Questions should be directed to the Office of Public Records by email to [opr@uspto.gov](mailto:opr@uspto.gov) or by telephone at (703) 308-9743.

## **22. USPTO to Provide Electronic Access to Cited U.S. Patent References with Office Actions and Cease Supplying Paper Copies**

### **Summary**

In support of its 21st Century Strategic Plan goal of increased patent e-Government, beginning in June 2004, the United States Patent and Trademark Office (Office or USPTO) will begin the phase-in of its E-Patent Reference program and hence will: (1) provide downloading capability of the U.S. patents and U.S. patent application publications cited in Office actions via the E-Patent Reference feature of the Office's Patent Application Information Retrieval (PAIR) system; and (2) cease mailing paper copies of U.S. patents and U.S. patent application publications with office actions except for citations made during the international stage of an international application under the Patent Cooperation Treaty (PCT). In order to use the new E-Patent Reference feature applicants must: (1) obtain a digital certificate and software from the Office; (2) obtain a customer number from the Office; and (3) properly associate patent applications with the customer number. Alternatively, copies of all U.S. patents and U.S. patent application publications can be accessed without a digital certificate from the USPTO web site, from the USPTO Office of Public Records, and from commercial sources. The Office will continue the practice of supplying paper copies of foreign patent documents and non-patent literature with Office actions. Paper copies of cited references will continue to be provided by the USPTO for international applications under the PCT during the international stage.

### **Deployment of E-Patent Reference System**

The USPTO will deploy the full E-Patent Reference program starting in June of 2004. In accordance with the schedule shown below, paper copies of cited U.S. patents and U.S. patent application publications will cease to be mailed to applicants with Office actions in the indicated Technology Centers (TCs). Paper copies of foreign patents and non-patent literature will continue to be included with office actions.

#### **Schedule**

June 2004	TCs 1600, 1700, 2800 and 2900
July 2004	TCs 3600 and 3700

**August 2004 TCs 2100 and 2600****Description of E-Patent Reference System**

On December 1, 2003, the Office made available a new feature in the Office's Private PAIR system, E-Patent Reference, to allow convenient downloading and printing of cited U.S. patents and U.S. patent application publications. A notice announcing this system was published in the Official Gazette, (see Notice of Office Plan to Cease Supplying Copies of Cited U.S. Patent References With Office Actions, and Pilot to Evaluate The Alternative of Providing Electronic Access to Such U.S. Patent References, 1277 Off. Gaz. Pat. Office 156 (Dec. 23, 2003)). The same notice also announced the Office's future plan to cease supplying copies of cited U.S. patents and patent application publications with Office actions.

The E-Patent Reference system allows an authorized user of Private PAIR to download the U.S. patents and U.S. patent application publications cited on a form PTO-892 in Office actions, as well as U.S. patents and U.S. patent application publications submitted by applicants as part of an information disclosure statement (IDS) on form PTO/SB/08 (1449). The retrieval of some or all of the documents is performed in one downloading step with each of the documents encoded as Adobe Portable Document format (.pdf) files.

The E-Patent Reference system was used by applicants during a pilot program in December 2003 and January 2004. In response to some technical issues discovered by users, changes to make the system more compatible with users' firewalls and office systems were made during the pilot.

Consequently, applicants should expect to start receiving Office actions (in patent applications and during patent reexamination proceedings) without paper copies of cited U.S. patents and U.S. patent application publications in accordance with the schedule above. These documents will be available through the E-Patent Reference system for downloading using Private PAIR. Foreign patents and non-patent literature will continue to be provided to the applicant on paper. Communications from the Office during the international stage of an international application under the PCT will continue to include paper copies of all references, including U.S. patents and U.S. patent application publications.

In summary, all U.S. patents and patent application publications are available on the USPTO web site, from the Office of Public Records and from commercial sources. Additionally, a simple system for downloading the cited U.S. patents and patent application publications has been established for applicants, called the E-Patent Reference system. As E-Patent Reference and Private PAIR require participating applicants to have a customer number, retrieval software and a digital certificate, all applicants are strongly encouraged to contact the Patent Electronic Business Center to acquire these items. To be ready to use this system by June 1, 2004, contact the Patent EBC as soon as possible.

### Steps to Use the E-Patent Reference Feature

Access to Private PAIR is required to utilize E-Patent Reference. If you do not already have access to Private PAIR, the Office urges practitioners and applicants not represented by a practitioner to: (1) obtain a no-cost USPTO Public Key Infrastructure (PKI) digital certificate; (2) obtain a USPTO customer number; (3) associate all of their pending and new application filings with their customer number; (4) install free software (supplied by the Office) required to access Private PAIR and the E-Patent Reference; and (5) make appropriate arrangements for Internet access.

### Instructions for performing the 5 steps:

Step 1: Full instructions for obtaining a PKI digital certificate are available at the Office's Electronic Business Center (EBC) web page at: <http://www.uspto.gov/ebc/downloads.html>. Note that a notarized signature will be required to obtain a digital certificate.

Step 2: To get a Customer Number, download and complete the Customer Number Request form, PTO-SB/125, at: <http://www.uspto.gov/web/forms/sb0125.pdf>. The completed form can then be transmitted by facsimile to the Patent Electronic Business Center at (703) 308-2840, or mailed to the address on the form. If you are a registered attorney or agent, then your registration number must be associated with your customer number. This association is accomplished by adding your registration number to the Customer Number Request form.

Step 3: A description of associating a customer number with the

correspondence address of an application is described at the EBC Web page at:  
[http://www.uspto.gov/ebc/registration\\_pair.html](http://www.uspto.gov/ebc/registration_pair.html).

Step 4: The software for electronic filing is available for downloading at [www.uspto.gov/ebc](http://www.uspto.gov/ebc). Users can also contact the EFS Help Desk at (703) 305-3028 and request a copy of the software on compact disc. Users will also need Adobe Acrobat Reader, which is available through a link from the USPTO web site.

Step 5: Internet access will be required which applicants may obtain through a supplier of their own choice. As images of large documents must be downloaded, high-speed Internet access is recommended.

The E-Patent Reference feature is accessed using a button on the Private PAIR screen. Ordinarily all of the cited U.S. patent and U.S. patent application publication references will be available over the Internet using the Office's new E-Patent Reference feature. The size of the references to be downloaded will be displayed by E-Patent Reference so the download time can be estimated. Applicants and registered practitioners can select to download all of the references or any combination of cited references. Selected references will be downloaded as complete documents in the Portable Document Format (.pdf). The downloaded documents can be viewed and printed using Adobe's Acrobat Reader program and other software.

#### Other Options

The E-Patent Reference function requires the applicant to use the secure Private PAIR system, which establishes confidential communications with the applicant. Applicants using this facility must receive a digital certificate, as described above. Other options for obtaining patents which do not require the digital certificate include the USPTO's free Patents on the Web program (<http://www.uspto.gov/patft/index.html>). The USPTO's Office of Public Records also supplies copies of patents and patent application publications for a fee (<http://ebiz1.uspto.gov/oems25p/index.html>). Commercial sources also provide patents and patent application publications.

Section 707.05(a) of the Manual of Patent Examining Procedure, which currently provides that copies of cited references are in general automatically furnished without charge to applicant together with the

Office action in which they are cited, will be revised in due course for consistency with the practice announced in this notice.

### Comments

The Office published a notice announcing its plan to cease supplying copies of cited U.S. patent references with Office actions, (see Notice of Office Plan to Cease Supplying Copies of Cited U.S. Patent References With Office Actions, and Pilot to Evaluate The Alternative of Providing Electronic Access to Such U.S. Patent References, 1277 Off. Gaz. Pat. Office 156 (Dec. 23, 2003)). The Office received numerous comments in response to this notice. A summary of representative comments and the Office's responses to the comment, grouped by topics, follows:

Comment 1: The requirement to use the Office's customer number/digital certificate shifts the responsibility of producing paper copies to the applicant. A number of comments indicated that adopting the proposal would result in an increased responsibility for the applicant, as the applicant or applicant's representative would be required to print the references.

Response: The USPTO is implementing the E-Patent Reference program as part of the Office's e-Government initiative and to align funding priorities to the Patent Initiatives, including the hiring of examiners. Applicants can purchase copies of U.S. patents and patent application publications from a variety of vendors if they choose not to print copies through the E-Patent Reference system.

The USPTO is moving toward electronic filing and processing of both patent applications and trademark applications. The policy announced in this notice is simply a step towards a more fully automated patent examination process. By analogy, briefs and court opinions that include case citations do not include paper copies of the cited cases. Rather, the cited cases are available via books or electronic databases. Similarly, the USPTO will no longer provide paper copies of U.S. patents and patent application publications since they are available electronically free of charge. Finally, this change will avoid duplication and waste since an applicant may not need to print out every page of a cited U.S. patent or patent application publication.

Comment 2: Adopting the proposal would hurt the solo practitioners and pro se applicants the most, which is unfair.



Response: The solo practitioners and pro se applicants have the same electronic access as the larger firms and corporations, available instantaneously over the Internet. If a solo practitioner or a pro se applicant chooses not to print copies of U.S. patents and patent applications publications through the USPTO Patents on the Web system or through the E-Patent Reference system, commercial sources that provide patents very quickly and inexpensively are available, and copies of U.S. patents and patent application publications are also available at the Patent and Trademark Depository Libraries (PTDLs). Additionally, the cost of patents if ordered from the USPTO Office of Public Records is very reasonable (\$3).

Comment 3: Some applicants indicated that the service is reliable and quick, and consistent with the electronic commerce initiatives in their law firms and businesses.

Response: As pointed out by some respondents, electronic copies of the references are very usable, available without mail delays, and capable of being sent to clients, other attorneys and experts by electronic means.

Comment 4: The statute 35 USC Sec. 132 requires the Office when sending a rejection to state the reasons "together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application".

Response: The requirement that an Office action contain "such information and references as may be useful in judging of the propriety of continuing the prosecution of his application" was added to the patent laws in the Patent Act of 1870. The circumstances surrounding this provision reveal that it requires that an Office action identify the prior inventions or patents that are relied upon in making a rejection, not that it requires that an Office action be accompanied by copies of the cited references. The USPTO did not even begin providing copies of cited references with Office actions until 1965, when 35 U.S.C. Sec. 41 was amended to authorize (but not require) the USPTO to provide copies of patents cited in Office actions without charge. See 35 U.S.C. Sec. 41(e) ("[t]he Director may provide any applicant issued a notice under [35 U.S.C. Sec. 132] with a copy of the specifications and drawings for all patents referred to in that notice without charge") (emphasis added). Nevertheless, the Office will provide access to U.S. patents and patent

application publications, albeit not in paper form.

Comment 5: A number of users suggested that the Office provide paper references at an extra cost.

Response: The Office of Public Records does offer that service, at a reasonable cost, and it is available through a number of delivery channels. See 37 CFR 1.19 (a). Commercial services also provide U.S. reference documents, in person, by mail, and over the Internet.

Comment 6: Some comments indicated that the length of the pilot should have been expanded.

Response: E-Patent Reference system will continue through the end of May to allow applicants to become familiar with E-Patent Reference and to be sure all technical concerns are addressed.

#### For Further Information Contact

Questions concerning the E-Patent Reference feature and questions concerning the operation of the PAIR system should be directed to the Patent EBC at the USPTO at (866) 217-9197. The EBC may also be contacted by facsimile at (703) 308-2840 or by e-mail at EBC@uspto.gov. Questions about this notice may be directed to Jay Lucas, at Jay.Lucas@uspto.gov and Rob Clarke, at Robert.Clarke@uspto.gov. OG  
Notices: 18 May 2004

### **23. Consolidated Appropriations Act, 2005 enacted on December 8, 2004**

H.R. 4818, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act) was signed by President George W. Bush and enacted into law on December 8, 2004. The Consolidated Appropriations Act revises certain patent application and maintenance fees; provides separate fees for a basic filing fee, a search fee, and an examination fee; and requires an additional fee for any patent application whose specification and drawings exceed 100 sheets of paper (application size fee). The new patent fees are now effective and will remain in effect during the remainder of fiscal year 2005 and during fiscal year 2006. The patent maintenance fee changes apply to any maintenance fee payment made on or after December 8, 2004, regardless of the filing or issue date of the patent for which the fee is submitted. The revised maintenance fees took effect on December 8, 2004. Thus, any maintenance fee paid at any time on (or after) December 8, 2004 is subject to the revised maintenance fee amounts set forth in the Consolidated Appropriations Act.

**Note: If you are paying via the USPTO's Internet Web site, there will likely be a delay in updating the maintenance-fee information on the USPTO's Office of Finance On-Line Shopping Web page. Therefore, if paying on-line, please refer to the updated fee schedule to ensure that you include the appropriate updated fee amount. Maintenance fees must be timely paid in the appropriate amount to avoid expiration of a patent.**

The new basic filing fee (or national fee), search fee, examination fee, and application size fee apply to national patent applications (other than provisional applications) filed on or after December 8, 2004, and to international patent applications in which the basic national fee is paid on or after December 8, 2004. The new provisional application filing fee applies to any provisional application filing fee paid on or after December 8, 2004. The filing fee (or national fee), search fee, and examination fee are due on filing. If the filing fee (or national fee) is paid on filing, but the search fee and/or examination fee is missing, the USPTO will issue a notice requiring that any missing search fee and examination fee (but no surcharge until further notice) be paid within a specified period of time in order to avoid abandonment. Thus, if at least the full basic filing fee under the Consolidated Appropriations Act is paid on or after December 8, 2004, the USPTO will issue a notice requiring any balance of the search fee and the examination fee (but no surcharge). The remaining patent application fee changes, including the excess claims fees, extension of time fees, and appeal fees, apply to any fee payment made on or after December 8, 2004, regardless of the filing date of the application for which the fee is submitted.

USPTO customers should monitor the USPTO's Internet Web site frequently for current patent fee information.

Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM D CUMMING** whose telephone number is **571-272-7861**. The examiner can normally be reached on Tuesday & Wednesday, 10:30am to 8:30pm,.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
WILLIAM D. CUMMING  
Primary Examiner  
Art Unit 2683

Wdc



UNITED STATES  
PATENT AND  
TRADEMARK OFFICE

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